

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS CARVER,

Defendant.

Case No. CR23-5085-DGE-02

ORDER DENYING MOTION TO  
REOPEN DETENTION HEARING

THE COURT, having conducted a hearing on Defendant's Motion to Re-open Detention Hearing (Dkt. 491), on July 11, 2023, and having previously held a detention hearing on March 28, 2023, pursuant to 18 U.S.C. § 3142, has determined that the issue of detention should not be re-evaluated.

The Court stands by the determination made on March 28, 2023, that no condition or combination of conditions which Defendant can meet will reasonably assure the safety of any other person and the community. The legal test for deciding whether a detention hearing should be re-opened is:

1. Does information exist that was not known to the moving party at the time of the detention hearing?
2. And, if the moving party has presented such information, does the new information have a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required, and the safety of any other person and the community? 18 U.S.C. § 3142(f).

To be considered "material" for purposes of revisiting a detention order, any new information must be of a nature that would either show the defendant is less likely to flee or fail to appear for trial, or less likely to have the potential for dangerousness to

1 others and the community. *United States v. Watson*, 475 Fed. Appx. 598, 600 (6th Cir.  
2 2012).

3 The defense asserts the following information was not known to the defense at  
4 the time of the detention hearing on March 28, 2023, and argues that it is material to the  
5 issue of release or detention:

- 6 • Defendant's sister is available to be third-party custodian;
- 7 • Defendant has a heart condition and a diagnosis of Hepatitis C; and
- 8 • Facts have come to light that contravene the government's earlier assertions.

9 While the Court finds that new information exists that was not known at the time  
10 of the previous detention hearing – this information does not have material bearing to  
11 suggest there is less risk of dangerousness to others or to the community, or that such  
12 risks could effectively be mitigated.

13 Defendant asserts firearms were not found at Defendant's residence in Puyallup  
14 (the proposed residence for release). While the defense did not present oral argument  
15 on this point, the government thoroughly addressed it. The Government has proffered  
16 information to show the defendant spent most of his time, in the weeks before his arrest,  
17 at the Auburn address where he was arrested and where methamphetamine, fentanyl  
18 pills, bulk cash, and firearms, were discovered. Dkt. 496 at 8-10. The Government has  
19 shown defendant spent substantial time at the Auburn property.

20 Defendant's extensive history of non-compliance and risk to the community are  
21 not offset by the emergence of Defendant's sister as proposed third-party custodian.  
22 This Court previously found that – given Defendant's history distributing illicit  
23 substances and the serious nature of the current alleged offense – release would pose  
24 a significant danger that could not be mitigated by a condition or set of conditions. Dkt.  
187. Considering the Defendant's long criminal history and pattern of non-compliance,

1 his sister's ability to become a third-party custodian does not sufficiently address the  
2 issues the Court weighed in the previous detention hearing. Defendant's proposed third-  
3 party custodian is new information that had not been considered at the previous  
4 detention hearing, but it is not material because the Defendant has shown he is capable  
5 of surreptitious behavior and has failed to comply with conditions of supervision in King  
6 County Superior Court on drug and possession of stolen property convictions (Dkt. 504,  
7 Supplemental Pretrial Services Report, at 9); thus, a proposed third-party custodian  
8 does not change the Court's assessment concerning risk of dangerousness to others or  
9 to the community.

10 At the time of his arrest, Defendant was diagnosed with congenital heart failure.  
11 Dkt. 491 at 6. He has since been diagnosed with hepatitis C, while in custody at the  
12 Federal Detention Center (FDC). *Id.* Defendant further states the FDC has failed to  
13 provide any medical treatment for Hepatitis C because the recommended course  
14 involves a strict regimen that could pose significant risks to the Defendant if prematurely  
15 stopped. *Id.* Issues relating to medical diagnosis and treatment would more  
16 appropriately be brought in a motion for medical furlough/temporary release -- not  
17 through a motion to reopen the detention hearing.

18 For the foregoing reasons, Defendant's Motion to Re-open Detention Hearing is  
19 DENIED.

20 Dated this 28th day of July 2023.

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23 Theresa L. Fricke  
24 United States Magistrate Judge